

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM CATO SELLS, JR.,

Petitioner,

v.

JUDGE GORDON L. GODFREY,
PROSECUTOR H. STEWART
MENEFEE,

Respondents.

CASE NO. 3:13-cv-05634-RJB

SUPPLEMENTAL ORDER
DENYING CERTIFICATE OF
APPEALABILITY

This matter comes before the court on review of the file.

I. PROCEDURAL HISTORY

On October 3, 2013, U.S. Magistrate Judge Karen L. Strombom issued a Report and Recommendation, denying Petitioner's application to proceed *in forma pauperis* and dismissing the case without prejudice. Dkt. 7. On October 24, 2013, the court adopted the Report and Recommendation but did not issue or deny a certificate of appealability. Dkt. 11.

1 II. CERTIFICATE OF APPEALABILITY

2 Pursuant to Rule 11(a) of the Rules Governing § 2254 Cases in the United States District
 3 Courts, the district court must issue or deny a certificate of appealability when it enters a final
 4 order adverse to the applicant. If the court issues a certificate, the court must state the specific
 5 issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). *Id.* If the court denies
 6 a certificate, the parties may not appeal the denial but may seek a certificate from the Court of
 7 Appeals under Federal Rule of Appellate Procedure 22. *Id.* A motion to reconsider a denial does
 8 not extend the time to appeal. *Id.*

9 III. LEGAL STANDARD

10 A certificate of appealability may be issued only if a petitioner has made “a substantial
 11 showing of the denial of a constitutional right.” See 28 U.S.C. § 2253(c)(2). A petitioner satisfies
 12 this standard “by demonstrating that jurists of reason could disagree with the district court's
 13 resolution of his constitutional claims or that jurists could conclude the issues presented are
 14 adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327
 15 (2003).

16 When the court denies a claim on procedural grounds, the petitioner must show that
 17 jurists of reason would find it debatable whether the petition states a valid claim of the denial of
 18 a constitutional right and that jurists of reason would find it debatable whether the district court
 19 was correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

20 IV. DISCUSSION

21 Petitioner’s showing does not warrant a certificate of appealability. Magistrate Judge
 22 Strombom recommended dismissing the application and petition for failing to comply with the
 23 court’s directives regarding the appropriate forms. This case was therefore dismissed on
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1 procedural grounds. No jurist of reason would find it debatable whether Petitioner failed to
2 comply with the Magistrate Judge's orders. Similarly, no jurist of reason would find it debatable
3 whether Petitioner failed to submit his pleadings on this court's forms by the dates provided by
4 the Magistrate Judge. Accordingly, a Certificate of Appealability should be denied.

5 V. ORDER

6 Therefore, it is hereby

7 **ORDERED** that a Certificate of Appealability is **DENIED**.

8 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
9 to any party appearing *pro se* at said party's last known address.

10 Dated this 30th day of October, 2013.

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12 ROBERT J. BRYAN
13 United States District Judge
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